

LAURA LEIGH,	)	3:11-cv-00608-HDM-WGC
	)	
Plaintiff,	)	
	)	ORDER
vs.	)	
	)	
SALLY JEWELL, et al.,	)	
	)	
Defendants.	)	
	)	

Under Federal Rule of Civil Procedure 15(a)(2), "the court should freely give leave [to amend] when justice so requires." However, leave to amend "is not to be granted automatically." *In re W. States Wholesale Natural Gas Antitrust Litig.*, 715 F.3d 716, 738 (9th Cir. 2013). The court "considers the following five factors to assess whether to grant leave to amend: (1) bad faith, (2) undue delay, (3) prejudice to the opposing party, (4) futility of amendment; and (5) whether plaintiff has previously amended his complaint." *Id.* (internal punctuation omitted). Where the court

1 has already granted leave to amend, "its discretion in deciding  
2 subsequent motions to amend is 'particularly broad.'" *Chodos v. W.*  
3 *Publ'g Co.*, 292 F.3d 992, 1003 (9th Cir. 2002).

4 Plaintiff's second amended complaint - the third filed in this  
5 matter - asserts inhumane treatment of wild horses during the  
6 Triple B and Jackson Mountain roundups. In her motion to amend her  
7 complaint for the third time, plaintiff seeks to add a First  
8 Amendment claim, to challenge a new Bureau of Land Management  
9 decision relating to the Triple B Complex, and to include other  
10 allegations of inhumane conduct, including the use of bait-  
11 trapping.

12 1. First Amendment

13 Plaintiff's claims in this action have always involved only  
14 the inhumane treatment of wild horses. While plaintiff's second  
15 amended complaint contains First Amendment assertions, her motion  
16 to file that complaint sought to add only a claim regarding  
17 inhumane conduct at the Jackson Mountain gather (see Doc. #42). No  
18 leave to file a First Amendment claim was ever sought or granted.  
19 To the extent the complaint could have been read as including a  
20 First Amendment claim, however, the court in its order dated March  
21 26, 2013, made clear that it did not, as a First Amendment claim  
22 was neither separately nor sufficiently pled. Plaintiff concedes  
23 that her second amended complaint did not state a First Amendment  
24 claim. (See Doc. #102 (Pl. Reply 7:16-17)).

25 This case has been before the court for almost two years and  
26 is nearing a determination on the merits. While plaintiff asserts  
27 that discovery has yet to begin and thus defendants would not  
28 suffer any prejudice should a First Amendment claim be added, the

1 status of discovery is irrelevant. For the entire course of this  
2 litigation, plaintiff's claims have been limited to allegedly  
3 inhumane conduct during the Triple B and Jackson Mountain gathers.  
4 A First Amendment claim would change the nature of this litigation.  
5 That alone would prejudice the defendants as a final resolution of  
6 the plaintiff's pending claims would necessarily be delayed.

7 Plaintiff also unduly delayed in seeking to add a First  
8 Amendment claim. Plaintiff waited 21 months to seek to amend her  
9 complaint to add a First Amendment claim.

10 Finally, on one previous occasion the plaintiff amended her  
11 complaint as a matter of course and on a second occasion the  
12 plaintiff sought and secured an amendment to her complaint and on  
13 neither occasion did she add or seek to add a First Amendment  
14 claim.

15 While plaintiff's amendment does not appear futile nor sought  
16 in bad faith, the other three factors weigh against allowing her to  
17 add a First Amendment claim to this case. *Cf. Morongo Band of*  
18 *Mission Indians v. Rose*, 893 F.2d 1074, 1079 (9th Cir. 1990)  
19 (upholding denial of amendment where there was a two-year delay,  
20 amendment would have altered the nature of litigation and the new  
21 claims were tenuous). Plaintiff's motion to amend her complaint to  
22 include a First Amendment claim will therefore be denied.

## 23 2. Three HMA

24 In May 2013, BLM issued the Three HMA Water/Bait Trapping  
25 Gather Environmental Assessment ("Three HMA EA"). The Three HMA EA  
26 authorizes water and bait trapping in much of the Triple B Complex,  
27 and includes several other decisions the plaintiff finds  
28 objectionable. Plaintiff's proposed third amended complaint does

1 not challenge the Three HMA EA separately but instead collapses her  
2 assertions within her preexisting claim related to the Triple B  
3 roundup, conducted pursuant to the Triple B Environmental  
4 Assessment ("Triple B EA"). However, while the Three HMA EA is  
5 tiered to the Triple B EA and covers much of the Triple B Complex,  
6 the Three HMA EA is a separate administrative document with,  
7 presumably, a separate administrative record, and it authorizes  
8 gather techniques not authorized by the Triple B EA, including bait  
9 trapping. Further, plaintiff's Three HMA claims are different in  
10 nature from the claims in this action. Plaintiff's Three HMA  
11 challenge is not to inhumane treatment during the gather - although  
12 plaintiff speculatively asserts such could happen - but is instead  
13 to the substance of what the EA authorizes. Adding claims that are  
14 entirely different in nature from the claims in this case and that  
15 are based on a new and separate administrative decision and record  
16 would prejudice the defendants by delaying the resolution of the  
17 claims currently pending.

### 18 3. Additional Allegations of Inhumane Treatment

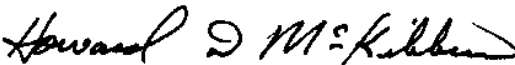
19 For the reasons set forth above, plaintiff may not amend her  
20 complaint to include any allegations relating to the Three HMA EA  
21 and roundup. This includes any allegations of bait-trapping in the  
22 Triple B Complex, as such was not authorized by the Triple B EA.  
23 However, insofar as plaintiff's complaint contains assertions that  
24 arise out of the EAs already subject to this action - including  
25 bait-trapping in Jackson Mountain - the court cannot discern any  
26 substantial prejudice to defendants in allowing such amendment.  
27 Any additional allegations of inhumane conduct in the roundups at  
28 issue in this action are covered by the administrative records

1 already produced, and are similar in nature to the plaintiff's  
2 existing claims. Although plaintiff delayed seeking leave to add  
3 such allegations and the court has previously allowed the plaintiff  
4 to amend her complaint, the amendment does not appear to be sought  
5 in bad faith and is not obviously futile.

6 Therefore, the plaintiff's motion to amend her complaint for  
7 the third time (#85) is **GRANTED** as to any additional factual  
8 allegations related to inhumane conduct at any roundups conducted  
9 pursuant to the Jackson Mountain and Triple B EAs, including bait-  
10 trapping at Jackson Mountain, and it is **DENIED** in all other  
11 respects. Should plaintiff wish to file an amended complaint in  
12 accordance with this order, she shall do so no later than August  
13 22, 2013.

14 IT IS SO ORDERED.

15 DATED: This 23rd day of July, 2013.

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18 UNITED STATES DISTRICT JUDGE  
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